

EXHIBIT 5

(Part 1)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 02-11404 (MFW)
. .
PETITION OF ERNST & YOUNG, .
INC. AS MONITOR OF .
TELEGLOBE HOLDINGS (U.S.) . 824 Market Street
CORPORATION, et al., . Wilmington, Delaware 19801
. .
Debtors in Foreign .
Proceedings. . May 24, 2002
. . 10:00 a.m.
.

TRANSCRIPT OF HEARING
BEFORE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

WITNESSES

BENJAMIN JAMES BABCOCK

	<u>PAGE</u>
Direct Examination by Mr. Zaleski	20
Cross Examination by Mr. Perch	33
Cross Examination by Mr. Golden	47
Redirect Examination by Mr. Zaleski	48

EXHIBITS

UST-1 Four-page Document

ID.
36

EVD.

1 THE CLERK: You may be seated.

2 MR. ZALESKI: Good morning, Your Honor. Matthew
3 Zaleski, Campbell & Levine, on behalf of Ernst & Young, the
4 foreign representative in these cases. Your Honor, briefly,
5 as by way of introduction, with me today I have Mr. Ben Babcock
6 from Ernst & Young, Mr. Peter Osborne, who is Canadian counsel
7 to Ernst & Young, Mr. Derek Tay, who is Canadian counsel to the
8 Teleglobe entities, and Mr. John Rapisardi and Brian Greer, who
9 are American counsel to the Teleglobe entities. Your Honor,
10 several parties have asked for permission now to move some pro
11 hacs, so what I'd like to do is yield the podium.

12 THE COURT: All right.

13 MR. ZALESKI: Thank you.

14 MR. HUSTON: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. HUSTON: Joseph Huston of Stevens and Lee. I
17 have the privilege, Your Honor, of requesting the Court to
18 grant the admission pro hac vice of Daniel J. Carragher,
19 Esquire, of Day, Berry and Howard. From Boston, Massachusetts,
20 Mr. Carragher is a member of the Supreme Court -- the Supreme
21 Judicial Court of Massachusetts, the United States Court of
22 Appeals for the First Circuit, the District Court for
23 Massachusetts, and the Bankruptcy Court up there as well, Your
24 Honor.

25 THE COURT: All right.

1 MR. HUSTON: His motion was filed yesterday as docket
2 item number 37. I have a copy with an incorporated order, if I
3 may approach?

4 THE COURT: .You may. It will be granted. Welcome.

5 MR. CARRAGHER: Thank you, Your Honor.

6 THE COURT: All right. Anyone else?

7 MR. FLASHEN: Your Honor, on the phone, this is Evan
8 Flashen from Bingham Dana. We're counsel to the ad hoc
9 committee of Teleglobe's public noteholders, about \$1.2 billion
10 of debt.

11 THE COURT: All right. Thank you.

12 MR. FINGER: Good morning, Your Honor, David Finger,
13 Delaware counsel for Lisa Donnan. I'd like to move the
14 admission pro hac vice of Mr. Richard Golden. I received a
15 signed certification. We will be scanning and filing it
16 shortly. Mr. Golden is admitted, practicing, and in good
17 standing in the Commonwealth of Virginia, the District of
18 Columbia, and the State of Michigan, and with Your Honor's
19 permission, he will speak on behalf of Lisa Donnan.

20 THE COURT: All right.

21 MR. FINGER: Thank you.

22 THE COURT: It will be granted. Welcome.

23 MR. GOLDEN: Thank you, Your Honor.

24 MR. ZALESKI: Your Honor, with the Court's
25 permission, what I'd like to do is open with a brief statement,

1 and then put Mr. Babcock on the stand in support of our motion
2 for temporary -- well, actually, a continuation of the existing
3 temporary restraining order, and a preliminary injunction as to
4 certain of the entities.

5 THE COURT: All right.

6 MR. ZALESKI: Your Honor, on May 15th, 2002, upon
7 direction and authorization of the Canadian Court, the monitor,
8 as the foreign representative of these foreign debtors,
9 commenced these ancillary proceedings and requested injunctive
10 relief from this Court with an overriding goal and principle in
11 mind. That goal was to preserve and maximize the value of the
12 assets of the foreign debtors as a going concern. The monitor,
13 in its first encountering these companies, quickly came to the
14 realization that because of the company's extremely tenuous
15 cash position and the significant cash being expended, it was
16 paramount that these foreign debtors take immediate action to
17 restructure and stabilize their business and pursue a going
18 concern sale. Failure to do so would have resulted in
19 irreparable harm to the interests of all the creditors, and a
20 significant negative ripple effect, both to the economy and the
21 critical service providers, as the customers of these companies
22 cannot migrate from this network quickly if it shuts down.

23 In order to effectuate the foregoing goal, it was
24 important to maintain the status quo of the events as they
25 related to the United States entities. The assets and the

1 operations of the U.S. entities, Your Honor, are interdependent
2 with the assets and the operations of the Canadian entities.
3 The facts -- in fact, the assets and the operations of these
4 U.S. entities are not viable on a standalone basis. This --

5 THE COURT: Well, I think this is all going to be
6 testimony. Why don't we just proceed to the testimony.

7 MR. ZALESKI: If you would prefer, Your Honor, then
8 I'd like to call Mr. Babcock at this time.

9 MR. BUCHBINDER: Your Honor, David L. Buchbinder and
10 Frank J. Perch, Office of the United States Trustee. We submit
11 that the threshold issue is the jurisdiction of this Court.
12 The petitioning party invoking the jurisdiction of the Court
13 has the burden of proof on the issue of jurisdiction. And
14 until the threshold question of jurisdiction is resolved, there
15 is no need to take testimony with respect to whether or not a
16 preliminary injunction should issue and the scope of the
17 preliminary injunction, if it is to issue. The United States
18 Trustee has filed its motion to dismiss case numbers 11404
19 through 11414, because the Court lacks jurisdiction over them,
20 and that threshold matter should be determined before we
21 proceed further.

22 THE COURT: What is the foreign representative's
23 position on that?

24 MR. ZALESKI: Initially, I'd like to articulate an
25 objection to the motion to expedite the hearing on the motion

1 to dismiss. I believe we should have had sufficiently more
2 time. Regardless of that, Your Honor, I believe we can put on
3 testimony, A, that would support jurisdiction in one of two
4 ways. First of all, the extension --

5 THE COURT: Well, don't tell me the testimony.

6 MR. ZALESKI: I was going to speak --

7 THE COURT: Don't you agree we should proceed --

8 MR. ZALESKI: -- to jurisdiction.

9 THE COURT: Don't you think we should proceed on the
10 jurisdictional issue first?

11 MR. ZALESKI: Well, the testimony is designed to get
12 to the jurisdictional issue, so I believe that we could --

13 THE COURT: Well, let me hear -- then I'll hear the
14 motion to dismiss first for lack of jurisdiction. Does the
15 U.S. Trustee wish to present any evidence in support of the
16 motion?

17 MR. BUCHBINDER: No, Your Honor. None other than the
18 judicial admissions that have already been identified in our
19 various pleadings.

20 THE COURT: All right. You'd like me to take
21 judicial notice of the petitions filed and the other pleadings
22 filed by the foreign representative in this case?

23 MR. BUCHBINDER: That is correct, Your Honor.

24 THE COURT: All right. I will take judicial notice
25 of those pleadings. Then, would you like to proceed? Let's

1 have testimony before I hear argument, that the foreign
2 representative wants to present.

3 MR. BUCHBINDER: Your Honor, it would be the
4 position, and it is the position of the United States Trustee,
5 that based upon the conclusive judicial admissions contained in
6 the petitions filed by the petitioning parties, that the taking
7 of testimony is superfluous and unnecessary. The case law is
8 unequivocal that statements under penalty of perjury, and
9 statements, and schedules, and consequently petitions, are
10 conclusively binding upon the Court. I can go through a number
11 of cases, if the Court will, but in its reply to this motion,
12 the petitioners have suggested to this Court that the filing of
13 a voluntary petition is some sort of ministerial cover sheet
14 act. The most important document to file in any bankruptcy
15 case for any debtor or for any petitioner is the petition. The
16 document itself says on it, "voluntary petition."

17 The only document that I am aware of in national
18 bankruptcy practice that is referred to as a cover sheet is a
19 cover sheet for an adversary proceeding that identifies
20 statistical information that pertains to adversary proceedings.
21 But a petition is a petition. It states jurisdictional facts.
22 It is signed under penalty of perjury by the petitioner, as are
23 all of these petitions. With respect to the United States
24 debtors in case numbers 11404 through 11414, each and every one
25 of the petitions states that the street address of the debtor

1 is in Reston, Virginia. Each and every one of the petitions
2 states that the county of residence for the principal place of
3 business is Fairfax County. It doesn't say Virginia, but I
4 believe that Fairfax County is in Virginia. The petition also
5 states that the location of the principal assets of the debtor,
6 if different from the street address above, is blank. These
7 are all of the jurisdictional facts.

8 Under Section 101(23), to qualify as a foreign
9 proceeding appropriate for relief under Section 304, the
10 petitioner must show that its domicile, residence, principal
11 place of business, or location of principal assets is located
12 in the foreign country. The unequivocal judicial admissions
13 contained in the petitions are that they are United States
14 debtors, that their street address is in the United States,
15 that the location of the principal assets is in the United
16 States. These are conclusively binding judicial admissions and
17 having made them to the Court they are stuck with them, and
18 there is no need to take any further testimony.

19 THE COURT: Let me hear from the foreign
20 representative, or debtors.

21 MR. ZALESKI: Your Honor, initially I would note that
22 to commence an ancillary proceeding under Section 304, the
23 voluntary petition form alone would be insufficient. The
24 attachment, and the ability to detail, in what is complaint
25 form, and add additional information beyond, I mean clearly, in

1 the verified petition that is part of the same petition packet,
2 the statements as to the interconnectedness of these debtors'
3 business that the primary place of business is in Canada, and
4 as being run through Canada, we are prepared to put on
5 testimony as to the interconnectedness of these companies, the
6 inability of the U.S. companies to stand alone, the fact that
7 the management decisions, the operational decisions, strategic
8 decisions of all of these companies are done in Canada. The
9 mere statement on this, and we don't dispute that the county of
10 residence for these companies would be Fairfax County. The
11 domicile for Delaware corporations would be Delaware. The
12 street address is Reston, Virginia. But for purposes of these
13 proceedings, these companies have a primary place of business
14 -- I shouldn't say for purposes of this proceedings, but these
15 companies have a primary place of business which is in Canada.

16 THE COURT: Well, I am going to allow testimony on
17 this point. I think that at a minimum the filing of the motion
18 for TRO and motion for preliminary injunction that contains
19 additional facts filed at the same time and verified --

20 MR. ZALESKI: Well, and I --

21 THE COURT: -- does permit the foreign representative
22 to add to its averments in the voluntary petition.

23 MR. ZALESKI: Just to reinforce that, Your Honor, I
24 mean, the fifth paragraph of the verified petition speaks
25 directly --

1 THE COURT: I've read it.

2 MR. ZALESKI: -- to Mr. Babcock's testimony.

3 THE COURT: All right. I will allow testimony on
4 this point, and cross examination on those specific points.

5 MR. ZALESKI: Thank you, Your Honor.

6 THE COURT: Mr. Perch?

7 MR. PERCH: Good morning, Your Honor. Frank Perch,
8 also for the United States Trustee. Your Honor, if the Court
9 is inclined to -- if the Court is inclined to treat it as an
10 evidentiary matter, notwithstanding the averments of petitions,
11 then I think we need to address another point. Once again, I
12 want to emphasize that it is the moving party's burden -- the
13 parties seeking to invoke the Court's jurisdiction, it's their
14 burden to establish the grounds and the factual basis on which
15 this jurisdiction and Court is being invoked. There are four
16 potential ways in which the United States petitioners can
17 invoke the Court's jurisdiction. It is the statement made in
18 the brief of the petitioners that they can choose any one of
19 them to invoke, and they only need one of them. We did not
20 learn, Your Honor, until late yesterday afternoon, which one
21 they're invoking, and that's the principal place of business.
22 It's very clear, Your Honor, that under the Evans case, as
23 cited in our memorandum -- cited in our objection, I'm sorry,
24 Your Honor, that we have the right to take discovery and not to
25 be surprised by the evidence that we have no ability to prepare

1 to rebut with respect to the jurisdictional allegations.
2 Therefore, Your Honor, we object to proceeding to an
3 evidentiary hearing today without having the opportunity to
4 review documents, depose witnesses, conduct appropriate
5 discovery regarding the jurisdictional facts. We have parties
6 here that are very, very, very desperate to railroad this
7 matter through and create a non-case, despite the fact that
8 based upon our analysis of the certificate of service filed by
9 Ms. Logan, 61 percent of the creditors who received notice of
10 this proceeding are United States creditors. But what these
11 petitioners want to do is ramrod this thing through without
12 providing the opportunity that the objecting parties have, as
13 set forth in the Evans case, to take discovery regarding the
14 jurisdictional facts.

15 THE COURT: Well, let me ask the U.S. Trustee,
16 regarding what it envisions the status will be in the interim.
17 Are you suggesting I cannot hear any testimony on the
18 preliminary injunction until I decide the jurisdictional issue,
19 which would, in effect, leave this -- these entities without
20 any protection?

21 MR. PERCH: Well, that's their choice, Your Honor.
22 They could, today, choose to amend their petitions to be
23 Chapter 11 petitions, and as an amended petition it would
24 relate back to the date of the original filing. They've chosen
25 not to do that.

1 THE COURT: And therefore waive their rights to
2 proceed under 304, which is what they assert they're entitled
3 to?

4 MR. PERCH: Your Honor, they're the moving party, and
5 if they want to -- if they want to present to the Court, now,
6 an argument of the legal basis on which they believe the Court
7 has the ability to grant any type of interim relief --

8 THE COURT: Well, that's what they're --

9 MR. PERCH: -- right after the Court's determining
10 jurisdiction, they have the ability to make that argument.
11 I've invited them to explain to me what that argument is, and
12 they have chosen, once again, as part of their strategy, not to
13 do so.

14 THE COURT: Except that you state, and they
15 acknowledge, that jurisdiction is necessary in order to enter
16 an injunction under 304. And they acknowledge that, so they're
17 willing to proceed today on the jurisdictional issue.

18 MR. PERCH: Their willingness, Your Honor, does not
19 trump the rights that the objecting parties have to conduct
20 this procedure in an orderly fashion. They're asking the Court
21 for emergency relief before the issue of jurisdiction can be
22 properly decided. I start from the proposition that the Court
23 needs to have jurisdiction before it can take an action that
24 affects the substantive rights of parties, 61 percent of whom
25 are U.S. creditors. I start from that proposition. If someone

1 wants to convince the Court and demonstrate to me why that's
2 not correct, I'm sure they'll have the opportunity to do so.
3 But I do agree with Your Honor that unless some argument to
4 that effect is made that persuades the Court that the Court
5 cannot act where the Court is not yet able to determine that it
6 has jurisdiction, and it would --

7 THE COURT: Well, I'm --

8 MR. PERCH: -- be inappropriate for the Court to
9 determine that it has jurisdiction without the appropriate
10 opportunity as set forth in the Evans case, for the
11 jurisdictional facts to be explored with discovery available,
12 so that the credibility of the witnesses can be tested, so that
13 the existence of evidence that they have chosen, because it
14 doesn't favor them not to bring it here today, can be
15 determined.

16 MR. ZALESKI: Your Honor, may I be --

17 THE COURT: Let me hear from other interested parties
18 first.

19 MR. ZALESKI: May I respond to the jurisdictional --

20 THE COURT: Not yet.

21 MR. GOLDEN: Richard Golden, appearing on behalf of
22 Lisa Donnan. And I just want to represent to the Court that
23 this matter that came -- I did not know that this had come
24 before the Court at this time. But on a factual basis, I have
25 talked about this matter with my client. I believe if she is

1 sworn as a witness she can offer testimony that would support
2 the position of the United States Trustee.

3 THE COURT: All right.

4 MR. ZALESKI: Your Honor, Bankruptcy Court
5 jurisdiction is fundamentally based upon 28 U.S.C. 1334(b). It
6 grants this Court jurisdiction over any civil proceeding
7 arising under Title 11. Forgetting whether or not --

8 THE COURT: But that begs the question --

9 MR. ZALESKI: Your Honor -- no, actually, Your Honor,
10 I would submit that it doesn't, because we are not seeking --
11 or, we do not need to seek, today, an adjudication of whether
12 or not the 304 standard is satisfied. We could go forward. I
13 mean, if it would facilitate any jurisdictional discovery,
14 etcetera, the entry of the TRO, the continuation of the TRO,
15 predicated upon your jurisdiction, to enforce Section 105 and
16 Rule 7065, to preserve these estates. If the Trustee's Office
17 needs --

18 THE COURT: If I don't have any jurisdiction over the
19 bankruptcy case, I don't have any 105 power to enter an order
20 in those cases.

21 MR. ZALESKI: Your Honor, I would submit that the
22 foreign proceeding requirement goes to the propriety, and is
23 actually substantive as to the entry of the relief under 304.
24 I mean, that -- at this point -- the period of time for parties
25 served with the summons has not been completed. They have 20

1 days to attempt to controvert. In affect, what the Trustee's
2 Office argument is is a controversion of those petitions. They
3 say we do not satisfy --

4 THE COURT: Right.

5 MR. ZALESKI: -- Section 304. During that period,
6 and this Court has already exercised some jurisdiction, and the
7 Evans Court exercised jurisdiction to grant jurisdictional
8 discovery, the foundation for that jurisdiction had to exist
9 elsewhere. I would submit that your jurisdiction, while this
10 is pending, while even the foreign debtors have the opportunity
11 to respond to these summonses, could be extended for a
12 reasonable period of time pursuant to your jurisdiction under
13 1334(b).

14 THE COURT: Well, I don't buy that argument, but I
15 will do this. I will proceed with the petition for an
16 injunction, and I will allow the petitioner to present its
17 evidence regarding my jurisdiction to proceed today. To the
18 extent I make any ruling on jurisdiction it will be preliminary
19 only, for purposes of allowing me to consider the injunctive
20 relief.

21 MR. ZALESKI: Okay. Your Honor, we would like --

22 THE COURT: And reserve any right of any party later
23 within the time periods allotted, to contest that.

24 MR. ZALESKI: Very well, Your Honor, then we would
25 like to submit testimony to establish this Court's jurisdiction

1 as to primary place of business.

2 THE COURT: All right. You may proceed.

3 MR. ZALESKI: And I'd like to call Mr. Babcock.

4 THE COURT: I guess we're no longer on the motion to
5 dismiss, since that will be continued pending discovery, and
6 we're now back to the petition for an injunction.

7 THE CLERK: Please remain standing.

8 THE COURT: Stand, please.

9 MR. PERCH: Your Honor, it appears that Your Honor
10 wishes to go forward with hearing evidence. Obviously the
11 United States Trustee reserves his motion to dismiss, and
12 reserves his objections to the Court proceeding before its
13 determination -- jurisdiction has been determined.

14 THE COURT: All right. Well, I will reserve your
15 right. I will continue your motion for -- to dismiss and allow
16 discovery to be taken, and I reserve your right to cross
17 examine and make any arguments today on jurisdiction with
18 respect to the motion for a preliminary injunction. Again, my
19 ruling today will be preliminary only, to determine whether I
20 believe I have the power, preliminarily, to enter any further
21 order.

22 MR. PERCH: Perhaps I should also, just as a
23 preliminary matter, so as not to have to unduly interrupt the
24 examination of the witnesses, indicate now that the U.S.
25 Trustee would reserve his right to recall any witness that's

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1 called today, inasmuch as we have not had the opportunity to
2 have identification of these witnesses, or take discovery, or
3 review documents.

4 THE COURT: So reserved.

5 MR. PERCH: Thank you.

6 THE COURT: Let's have the witness sworn.

7 THE CLERK: Please place your hand on the Bible.

8 Please state your full name and spell your last name for the
9 Court.

10 MR. BABCOCK: Benjamin James Babcock, B-a-b-c-o-c-k.

11 BENJAMIN JAMES BABCOCK, WITNESS, SWORN

12 THE CLERK: Please be seated.

13 MR. BABCOCK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. ZALESKI:

16 Q Mr. Babcock, where are you presently employed?

17 A I'm presently employed at Ernst & Young. I'm a Senior
18 Vice President of Ernst & Young, Inc., and a partner of Ernst &
19 Young in Canada.

20 Q Very good. And, Mr. Babcock, could you briefly describe
21 your educational background to the Court?

22 A My educational background, I have an undergraduate honors
23 degree, and I'm a chartered accountant in Canada, which is the
24 equivalent of a CPA in the United States.

25 Q Very good. And it has previously been established in the

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1 record of these proceedings that E&Y is the monitor to
2 Teleglobe and its affiliates in the pending CCAA proceedings.
3 Has Ernst & Young been employed as monitor in these types of
4 proceedings before?

5 A Yes, we have. We are regularly appointed as monitor in
6 large corporate reorganizations in Canada. It's a standard
7 business practice and required by statute in Canada.

8 Q So, could you briefly describe your personal experience in
9 large insolvency proceedings in international only?

10 A Yes. I've been involved in a number of major large
11 international insolvency proceedings. Most recently some large
12 cases, Philips Services, Lowes Cinaplex Entertainment
13 Corporation, and a number of other ones involving an
14 international element, including, you know, Cutty
15 International, and Lowes -- sorry, the Loan Group a few years
16 ago.

17 Q Very good. And could you briefly describe the duties of a
18 monitor in a Canadian CCAA proceeding?

19 A The monitor is a Court officer in Canada. We have a
20 fiduciary responsibility to stakeholders in the case. Our role
21 is to act -- to use a colloquialism, as the kind of eyes and
22 ears of the Court, and to provide the Court with a commercial
23 assessment of the things that are before the Court, and to give
24 recommendations to the Court on the matters that are put before
25 it.

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22

1 Q And in this present engagement, when did E&Y first become
2 involved with Teleglobe?

3 A We first became involved in early April of this year.

4 Q And in what capacity were you originally brought on board?

5 A We were first brought in as a financial advisor, with the
6 clear contemplation that our initial involvement that we would
7 become Court-appointed monitor in the event of a CCAA filing in
8 Canada.

9 Q And would that be an unusual type of engagement?

10 A That would be standard business practice, that you've
11 brought -- involved, to get up to speed on the business issues
12 facing the company, with the contemplation of becoming a Court
13 officer.

14 Q And you have been personally involved throughout this
15 engagement? Is that correct?

16 A Yes, I have. I've been involved almost on a -- on a full-
17 time basis since our first --

18 Q Could you please describe briefly what you, as well as
19 Ernst & Young, have done since commencing this engagement with
20 Teleglobe?

21 A Since the beginning of the engagement, our real role has
22 been, you know, assisting in working to assess the situation.
23 We've worked very intimately with the management team and in
24 discussions with the company stakeholders in terms of
25 understanding the issues facing the company, and in

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1 understanding and assisting in developing a strategy that makes
2 sense to stabilize this company and to maximize value for the
3 stakeholders of the company going forward.

4 Q So, you would say you have gained personal knowledge of
5 the facts related to this company?

6 A Absolutely.

7 Q Thank you. Moving on. Could you briefly describe for the
8 Court and the parties here today the history of the Teleglobe
9 businesses -- business? Excuse me.

10 A Very briefly, the history of Teleglobe as a business --
11 and maybe just to draw on a little bit of an analogy, in the
12 United States, to put it in context, if you go back to before
13 deregulation of the telecommunications industry, Teleglobe was
14 like the AT&T in the United States in the sense that it was the
15 traditional monopoly provider of international
16 telecommunications services between Canada and other foreign
17 jurisdictions.

18 Q Given the knowledge that you've acquired during the period
19 you've been working with the Teleglobe entities, could you
20 describe to the Court the business of those companies?

21 A Sure. Very briefly, maybe the easy phrase to understand
22 what Teleglobe does, they are a North American routed
23 international provider of voice and data telecommunications
24 services. What does that mean? North American routed means
25 that the telecommunications services either originate or

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24

1 terminate in a place. They originate and terminate in North
2 America. They're an international business, a global business.
3 You can see in the chart, it gives you a sense of scope that's
4 in front of you. They're international in the sense -- and I'm
5 just going to go back to the roots of the company. The roots
6 of the company, and its real core business today, is these
7 international relationships between Teleglobe and other
8 countries -- I'll call them PTTs, which are the other
9 equivalent, kind of monopoly telecommunication providers in
10 other countries. For example, you know, France Telecom and
11 Teleglobe had an agreement, called a bilateral agreement, to
12 share an infrastructure to exchange commercial voice and data
13 traffic between each other. And there is a competitive cost
14 advantage to do so, and those relationships go back an extended
15 period of time.

16 Q Very good. And what is it that would make business such
17 as this viable?

18 A The real viability, when you look at this business, is it
19 has a global network. And this network is an interdependent
20 and interconnected network around the world. Maybe the simple
21 analogy, it's like a highway of carrying voice and data traffic
22 between North America back and forth with countries the rest of
23 the world. When you think of it, like a -- think of it as a
24 highway carrying these things. I'm just going to use a couple
25 of analogies to understand the interdependency and

Babcock - Direct

25

1 interconnection of these pieces. It's not like a tree, where
2 you can, in this reorganization proceeding, if you cut off a
3 piece because it's not working, that the tree will keep going,
4 continue on. It's a little bit like, if you use the old
5 analogy of the old Christmas tree string of lights, if you cut
6 off a part of this network, or string of lights, the rest of
7 the network runs the potential of going down. So, what we've
8 been attempting to do, in terms of the restructuring
9 proceeding, is really keep the whole of this global business
10 together.

11 Q Very well. In light of your knowledge related to these
12 companies, could you explain to the Court, at the time of the
13 commencement of these proceedings, where the major business
14 decisions related to this core are made?

15 MR. PERCH: Your Honor, objection. The question here
16 is not -- the question here is what are the jurisdictional
17 facts with reference to the entities identified in paragraph
18 seven of the U.S. Trustee's objection to which the --

19 THE COURT: Well, overrule. I'll allow him to ask
20 the more general question first.

21 Q I'd repeat the question. In light of your knowledge of
22 these companies, where are the major business decisions related
23 to the core business being made?

24 A The major business decisions are all made based out of
25 Canada. All of the strategic operating decisions and financial

Babcock - Direct

26

1 functions are based out of Canada for the organization.

2 Q And on a day-to-day basis, where is this business being
3 run?

4 A Out of Canada.

5 Q And if a decision were to be made concerning even
6 something like continuing the operations and activities in the
7 United States, where would that decision be made?

8 A It would be made in Canada.

9 Q Thank you. In light of that, and your testimony as to the
10 interconnectedness of the Teleglobe business, do you know why
11 separate corporate entities do exist in the U.S.?

12 A My understanding, based on my discussions with management,
13 are that part of the reason why you have separate legal
14 entities set up in the United States and other jurisdictions is
15 to hold the assets that are used to operate this business. For
16 regulatory reasons you had to have them in a separate legal
17 entity, where the license are held.

18 Q Very well. Returning a bit to sort of the development of
19 Teleglobe business, could you please describe to the Court the
20 events that led to the company's decision to commence the CCAA
21 proceedings and the current circumstances of which they're in?

22 A Yes. Just to take a step back to early April, the company
23 began a process, or was asked by its major shareholder to
24 undertake a review of its business operations and assess its
25 future prospects, given the financial results in the company,

Babcock - Direct

27

1 and the events in the industry that were going on. That review
2 took place during early April. The results of that review were
3 communicated with the company's major shareholder on April
4 24th. They discontinued funding for the company, and the
5 company was dependent upon that funding on an ongoing basis.
6 And, you know, those issues really led to the liquidity crisis
7 that the company was faced at the end of April.

8 Q Okay. And, shifting, just briefly, to discuss the
9 liabilities of these companies, of the various Teleglobe
10 entities in the United States, how many are actually actively
11 involved in the company's business?

12 A In the United States, there's really one primary legal
13 entity. I think it's referred to as Teleglobe U.S.A., which
14 conducts most of the operations in the company in the United
15 States, or at least holds the assets in the United States. The
16 liabilities in that are approximately \$2.5 billion. Of that
17 2.5, just to put a little bit of context on it, \$2.3 billion of
18 those liabilities are owed to the top holding company and to
19 other related Teleglobe entities, and the ultimate
20 beneficiaries of those claims really are the creditors in
21 Canada, primarily the banks and the bondholders, who are
22 clearly the largest creditors of this organization on a
23 consolidated basis.

24 Q And since we're discussing creditors, at this time, is
25 there any mechanism that's in place to deal with claim

Babcock - Direct

28

1 adjudication?

2 A No, there is not.

3 Q And when do you think this mechanism would be developed,
4 or implemented?

5 A Certainly standard practice would be to allow the company
6 to go through the process of maximizing the value of what's
7 available for the stakeholders in the estate, and after that
8 you would proceed to have a formal claims process, the Canadian
9 process really being, in many respects, similar to what would
10 be done in the United States.

11 Q And I guess, just simply since we're limiting it, would
12 you please explain to the Court the reasons that support the
13 election to commence these ancillary proceedings?

14 A Probably just taking a step back in terms of the reasons,
15 the company went through, you know, a number of deliberations
16 about what was the right approach to proceed filing for Court
17 protection, considering, you know, a number of factors. And
18 those deliberations really occurred with the company's Canadian
19 legal counsel, United States legal counsel, and their foreign
20 legal counsel, to really look at what is a global business, and
21 what's the right thing to do in the context of a global
22 restructuring. The factors that were considered in terms of
23 commencement of the 304, in particular, I think really
24 considered three things. One, you know, what was the nature of
25 the assets that are in the United States, and how are they

Babcock - Direct

29

1 related to the rest of the entity? And just to put a couple of
2 reference points around that issue that we're taking into
3 consideration, a couple things were -- you know, it was very
4 clear that the U.S. assets, on a standalone basis, were not a
5 business. They were not a viable business. They were totally
6 dependent upon the rest of the entity. It was also looked at,
7 just to put reference to kind of the total business that we
8 were looking at, if you look at probably two measures which are
9 the most important measures for the company in terms of its
10 business, and its North American routed business, if you look
11 at kind of volume, which is minutes, or look at revenue, from a
12 minutes point of view, this company, in the last year in its
13 voice business, which is clearly the most significant portion,
14 did about 8.5 billion minutes. Of that, you had --
15 approximately 70 percent of it was Canadian based and 30
16 percent U.S. The other one, which is really what drives
17 profitability and viability of the company, is revenue. And if
18 you look at that revenue, which is the measure that you use in
19 this particular industry, that relationship is kind of 80
20 percent United States -- I'm sorry, 85 percent Canadian, 15
21 percent in the United States. So, we looked at
22 interdependency, interconnectedness and the fact that the U.S.
23 was totally dependent on its connections to Canada, and these
24 relative relationships. We looked at the creditors, which is
25 when you looked at the creditors in terms of totality of

Babcock - Direct

30

1 dollars, and who are the beneficiaries of the process, of going
2 through to maximize value, and the efforts to, you know,
3 proceed with a going concern sale and avoid the very negative
4 repercussions of liquidation which would clearly result in such
5 a fragile situation which the company was faced with in early
6 May. And lastly, what is the most I'll call it effective and
7 cost efficient way to proceed with what was the primary
8 objective, which was to maximize the value that was available
9 to people in a very short period of time. The company does not
10 have the luxury of a lot of time here. It's in a very fragile
11 situation. And you've got a global business that's difficult
12 to hold together. And keeping the whole together is absolutely
13 critical to maintaining a going concern because, as I indicated
14 before, kind of taking away any part of the whole -- or, I'm
15 sorry, any part of, you know, this kind of large Christmas tree
16 around the world takes down the rest of the lights. So, we had
17 to find a strategy that was cost effective, you know,
18 efficient, to achieve a way to maximize value for stakeholders
19 in a very difficult situation. And those were the primary
20 considerations that went into it. And it was felt that 304
21 was, you know, the appropriate mechanism to do that,
22 considering those facts.

23 Q Thank you. I guess one last question that goes to
24 jurisdiction would be two parts. Do you generally know how
25 many employees the companies have, or they employ in their

Babcock - Direct

31

1 business?

2 A Currently there are about 940 employees, I believe. Just
3 splitting those up between Canada and the United States,
4 probably the most important piece is who is running the
5 business. There are about 600 employees who really are focused
6 on running the continuing business of the company. Of those,
7 about 80 percent of them are located in Canada, ten percent in
8 the United States, and ten percent around the rest of the
9 world.

10 Q Thank you. And I said one more, there is actually one
11 last one. The Trustee has brought up the issue of the Chapter
12 11. What is your view as to the potential for a Chapter 11
13 filing for these companies? Or, why not a Chapter 11?

14 A I mean, this company does not have the funding for a
15 Chapter 11 proceeding. It's on very limited time lines to
16 achieve the goals that I discussed earlier, and has very
17 limited funding. The company, since, you know, filing for core
18 protection in Canada, and the initiation, I think, of the --
19 I'm going to get my terminology wrong a little bit here of the
20 TRO, and the TRO that was put in place on the 15th, has
21 achieved a degree of stability. You know, it looks like this
22 company has hit a soft landing and is proceeding very rapidly
23 in what's going before the Canadian Courts, or will be going
24 before the Canadian Courts is a very expedited process to try
25 and achieve a going concern sale here. And, you know, I can't

Babcock ~ Direct

32

1 comment specifically on the legalities of Chapter 11, and it's
2 not an area of expertise. But I can comment on the business
3 situation, the fact that the stability has been achieved with
4 what's been done. And, you know, maintaining that fragile
5 stability that's in place right now, where customers and
6 suppliers, you know, seem to have been continuing to, you know,
7 provide the business with services, continue the network,
8 certainly from a business point of view I'd be very, you know,
9 nervous about a situation that would further destabilize the
10 company by changing direction in terms of where things have
11 gone here.

12 Q And just to clarify one thing you said, you spoke of
13 generally the time line in Canada. Could you give us a sense
14 of how long the process --

15 A In terms of the sales --

16 Q Yes.

17 A In terms of the sales process. The time line that's being
18 contemplated, it's very clear that this company has to act very
19 quickly to try and achieve a going concern sale and avoid the
20 very negative repercussions that would come from an immediate
21 shutdown of the business. Right now, in front of a number of
22 the major stakeholders of the company is the outline of a sales
23 process which is not dissimilar from one that would be used in
24 the United States. The company anticipates seeking Court
25 approval for that process with a view to bringing forward a